

**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554**

In the Matter of)	
)	
Schools and Libraries Universal Service)	CC Docket No. 02-6
Support Mechanism)	
)	
A National Broadband Plan for Our Future)	GN Docket No. 09-51
)	

**COMMENTS OF EDUCATIONAL NETWORKS TO THE FURTHER NOTICE
OF PROPOSED RULEMAKING AND THE NATIONAL BROADBAND PLAN
NOTICE OF PROPOSED RULEMAKING**

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Dated: July 9, 2010

**COMMENTS OF EDUCATIONAL NETWORKS TO THE FURTHER NOTICE
OF PROPOSED RULEMAKING AND THE NATIONAL BROADBAND PLAN
NOTICE OF PROPOSED RULEMAKING**

Educational Networks provides E-rate eligible web hosting services, and other services, to K-12 schools. It is providing these comments to the Federal Communications Commission's ("FCC" or "Commission") Further Notice of Proposed Rulemaking ("FNPRM")¹ in support of the proposal to make web hosting ineligible.

It may seem surprising for a web hosting provider that obtains E-rate funding to support the FCC's proposal for elimination of eligibility. However, it makes sense when viewed against today's requirements by schools for web hosting services. They are demanding a full set of features that goes well beyond the features that the FCC considers eligible. On the one hand, competition in the marketplace demands that service providers respond to the wants and needs of schools, but, on the other hand, service providers have an incentive to seek the best possible cost allocation between eligible and ineligible portions. This inconsistency between the FCC's focus on basic access and the requirements demanded by applicants for feature-rich web hosting solutions creates distortions and skewed incentives.

In the early years of E-rate, both e-mail and web hosting services were ineligible, but were added to the list of eligible Priority 1 services when USAC rather than the FCC was responsible for preparing the Eligible Services List ("List" or "ESL").² These

¹ *In the Matter of Schools and Libraries Universal Service Support Mechanism*, Report and Order and Further Notice of Proposed Rulemaking, 25 FCC Rcd 6562 (2009) (*hereinafter* "FY2010 ESL Report and Order and FNPRM").

² "E-mail account fees" were changed from an ineligible to an eligible Priority 1 service with publication of the October 17, 2001, List. See <http://www.usac.org/sl/tools/search-tools/eligible-services-list-archived-versions.aspx>. Ostensibly to maintain comparability among the types of communication services available on the Internet, "web hosting" was changed from an

additions were made even though the FCC's policy was that eligibility was limited to "basic conduit access" to the Internet.³ When the FCC took on direct responsibility for issuing a finalized Eligible Services List for each funding year, they accepted USAC's ESL as the initial baseline, and thus the eligibility of e-mail and web hosting as Priority 1 services became a part of FCC policy. The FCC is now evaluating whether to return to its earlier standard of ineligibility for web hosting services.

The features provided by current web hosting services can include sophisticated content creation features. Web hosting services can include groupware calendars and software applets. Other full-featured software applications such as grading modules may be included or may be available at additional cost if the core service is obtained. Such feature-rich modules, while ineligible, are highly attractive to schools and influence their purchase decisions or what services to seek in the first place.⁴

Educational Networks believes that Internet-based communication services are invaluable to applicants, and that these services will not only survive, but thrive regardless of E-rate funding.⁵ With the removal of E-rate eligibility from these services,

ineligible to an eligible Priority 1 service with publication of the October 10, 2003, List. See *Id.* Prior to these changes, e-mail and/or web hosting services could be provided under E-rate only if they were an integral component part of core Internet access offered at no additional cost.

³ "We also follow the Joint Board's recommendation, supported by many commenters that schools and libraries receive rate discounts from telecommunications carriers for basic 'conduit' access to the Internet." *In the Matter of Federal-State Joint Board on Universal Service*, Report and Order, 12 FCC Rcd. 8776, 9008-09, ¶ 436 (1997).

⁴ Under USAC's interpretation of the FCC's competitive bidding requirements, schools cannot consider the ineligible features when evaluating cost of competing systems, but can consider all features including ineligible features when evaluating other comparative criteria. See "Construct A n Evaluation" at <http://www.usac.org/sl/applicants/step04/construct-evaluation.aspx>.

⁵ The rationale provided by the FCC in the FNPRM for making web hosting ineligible is that "we do not believe it is essential to the educational purposes of schools and libraries." See *FY2010 ESL Report and Order and FNPRM*, *supra* note 1, ¶ 37. Educational Networks respectfully suggests that this opinion is completely incorrect, and urges the Commission to find an alternative explanation and rationale if it adopts the proposal to make Internet communication services ineligible.

applicants will be in an even better position to carefully evaluate the features of competing services because the percentage of E-rate eligibility will no longer be a distorting factor in this evaluation. Companies that may in the past have attempted to tap into E-rate funds as an entrance point for their additional, ineligible services will no longer have a competitive advantage when compared against other companies such as Educational Networks that have taken a more conservative stance regarding the percentage of E-rate eligibility of their service offerings.

For the foregoing reasons, Educational Networks respectfully urges the Commission to make web hosting services ineligible.

Respectfully submitted,

_____/s/_____
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July 9, 2010

CERTIFICATE OF SERVICE

I, Megan Sowards, certify on this 9th day of July 2010, a copy of the foregoing Comments of Educational Networks have been served via electronic mail or first class mail, postage pre-paid, to the following:

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